

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 08-1254 JB

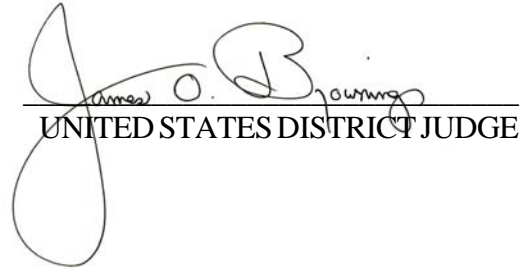
MIGUEL TAPIA-CORTEZ,

Defendant.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on the Defendant's Motion for a Variance and Sentencing Memorandum, filed August 20, 2008 (Doc. 16). The Court held a sentencing hearing on September 23, 2008. The primary issue is whether the Court should vary from the advisory guideline sentence because Defendant Miguel Tapia-Cortez came to the United States when he was fifteen years old, all of his ties are to the United States, and he is culturally assimilated to the United States. The Court noted on the record that the Defendant disputed the facts set forth in paragraph twenty-two of the pre-sentencing report, but not that he was convicted and that the criminal history points were appropriately assigned. The Court also clarified that the Defendant is not seeking a downward departure, but is seeking a variance. For the reasons stated at the hearing and for other reasons consistent therewith, the Court will deny the motion for a variance.

**IT IS ORDERED** that the Defendant's Motion for a Variance and Sentencing Memorandum is denied. Defendant Miguel Tapia-Cortez will be incarcerated for a term of 41 months, and will be placed on supervised release for a term of two years.



UNITED STATES DISTRICT JUDGE

Counsel:

Gregory J. Fouratt  
United States Attorney for the  
District of New Mexico  
Norman Cairns  
United States Attorney's Office  
Albuquerque, New Mexico

*Attorney for the Plaintiff*

Joseph W. Gandert  
Federal Public Defender  
Albuquerque, New Mexico

*Attorney for the Defendant*